

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 EVERYSpace CONSTRUCTION, LLC,

4 Plaintiff

5 v.

6 ENCOR SOLAR, LLC, et al.,

7 Defendants

Case No.: 2:23-cv-01105-APG-DJA

**Order Denying Motion for Default
Judgment**

[ECF Nos. 102, 103]

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9 EverySpace Construction, LLC moves for entry of default judgment against Encor Solar,
10 LLC. ECF Nos. 102, 103. The motion fails to address the factors that should “be considered by
11 courts in exercising discretion as to the entry of a default judgment,” as enunciated by the Ninth
12 Circuit in *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, I deny the motion
13 without prejudice to filing a new motion addressing those factors.

14 In addition, the motion’s request for fees and costs is defective for a variety of reasons. I
15 point these out so EverySpace can address them if it files a new motion seeking default judgment.

16 EverySpace seeks \$1,608.15 in costs incurred for service of process expenses, filing fees,
17 and internet research costs. ECF No. 103-2 at 2. Two entries (02/27/2024 and 07/19/2024) are
18 not sufficiently described for me to understand what those charges are for. Regardless, none of
19 these costs is reimbursable through a motion for default judgment.

20 Federal Rule of Civil Procedure 54(d) contains two separate provisions for costs. To
21 request taxable costs, the prevailing party must file a bill of costs with the clerk. *See also* LR 54-
22 1. Taxable costs are taxed by the clerk rather than the court. Fed. R. Civ. P. 54(d)(1); LR 54-1.
23 The categories of taxable costs are circumscribed by 28 U.S.C. § 1920. *See also* LR 54-1. For

1 example, filing fees and service of process expenses are taxable costs. *See* 28 U.S.C. § 1920(1);
2 LR 54-2.

3 By contrast, nontaxable costs are recoverable on a motion to the court, along with
4 attorney’s fees Fed. R. Civ. P. 54(d)(2) (“claim for attorney’s fees and related nontaxable
5 expenses”); *see also* LR 54-14(a)(2) (a motion for attorney’s fees must include “[a]n itemization
6 of all costs sought to be charged as part of the fee award and not otherwise taxable pursuant to
7 LR 54-1 through 54-13”). Thus, EverySPACE’s request for taxable costs such as filing fees and
8 service of process expenses are properly recovered through a bill of costs filed with the clerk
9 after judgment.

10 EverySPACE requests reimbursement for the \$5,000 expert fee paid to Donna DiMaggio of
11 D Squared Consulting, LLC. ECF No. 103 at 8. Expert witness fees are not ordinarily allowed.
12 LR 54-11(h). Similarly, costs for “computer research fees” are not ordinarily allowed. LR 54-
13 11(g).

14 EverySPACE’s request for attorney fees is likewise defective. The motion lacks most of
15 the information required under Local Rule 54-14 and *Brunzell v. Golden Gate National Bank*,
16 455 P.2d. 31, 33 (Nev. 1969). For instance, LR 54-14(a)(1) requires a “reasonable itemization
17 and description of the work performed.” The motion seeks fees for 14 attorneys or paralegals,
18 but it is unclear which of the listed people are attorneys and which are paralegals. No hourly rate
19 is listed for any of them except Samuel Castor. There is no description of what work each
20 person performed, how long those tasks took, why the tasks were necessary, and why the
21 amounts charged and time taken were reasonable. There is no description of the qualities of each
22 advocate (other than Mr. Castor) as required by *Brunzell*. 455 P.2d at 33. The failure to provide
23 this information “may be deemed a consent to the denial of the motion.” LR 54-14(c).

1 Donna DiMaggio is listed as an attorney but she is also the plaintiff's expert. *Compare*
2 ECF No. 103 at 9 *with* ECF No. 103-1 at 8. Ignoring for the moment whether a party's counsel
3 should and would be permitted to also serve as its expert witness, it appears EverySpace is
4 double-counting Ms. DiMaggio's time by also seeking to recover an expert fee for her.

5 EverySpace states that its "paralegals assisted in drafting select pleadings in this matter
6 and preparing counsel for hearings" ECF No. 103 at 10. But only one hearing was
7 conducted in this case. ECF No. 83. Moreover, "[f]ees for investigative or paralegal services"
8 are not ordinarily allowed. LR 54-11(i).

9 The motion is defective for other reasons. EverySpace should take care that its next
10 motion complies with the Federal Rules of Civil Procedure, Local Rules, and relevant precedent.

11 I THEREFORE ORDER the plaintiff's motion for entry of default judgment (**ECF Nos.**
12 **102, 103**) **is denied without prejudice.**

13 DATED this 5th day of February, 2025.



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15 ANDREW P. GORDON
16 CHIEF UNITED STATES DISTRICT JUDGE
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